

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213745**DATE:** September 20, 1984**MATTER OF:** Public Entity Underwriters, Ltd.**DIGEST:**

1. A bid to provide insurance which allegedly contains a clerical error and which is nonresponsive on its face for failure to conform to the solicitation's cancellation of coverage clause may not be corrected after bid opening to be made responsive.
2. Bidder who submitted a nonresponsive bid is not considered an "interested party" to protest the responsiveness of another bid under Bid Protest Procedures because protester is ineligible for award on the procurement and resolicitation would not be necessary even if the protest contentions were valid since there are six other bidders above the awardee.

Public Entity Underwriters, Ltd. (PEU), protests the rejection of its low bid as nonresponsive and the award of a contract to Alexander & Alexander of Texas, Inc. (Alexander), under an invitation for bids (IFB) issued by the Department of Housing and Urban Development (HUD) for general liability and automobile insurance and fidelity bond coverage for Indian Housing Authorities.

We deny the protest in part and dismiss the remainder.

Eight bids were received by HUD under the IFB. PEU's bid was the lowest priced and the awardee's bid was the second lowest. PEU's low bid was rejected as nonresponsive for two reasons: (1) PEU's bid contained a cancellation agreement clause in its comprehensive general liability policy which deviated from the IFB provision for written notice of 120 days prior to cancellation of coverage; and (2) PEU's bid did not comply with the IFB specifications limiting deviations from the average bid rate for any specific state or individual Indian Housing Authority.

PEU admits that its cancellation agreement clause deviated from the specification provision at section III, part 2(a), paragraph 5(c). However, since it certified

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after bid opening and prior to award that the deviation was a clerical error, PEU argues that the deviation should be corrected. PEU, citing McCarty Corporation v. United States, 499 F.2d 633 (Ct. Cl. 1974), and 52 Comp. Gen. 604 (1973), additionally contends that, since its bid contained two other properly drafted amended cancellation agreement clauses for other insurance, the alleged clerical error should be corrected to read like the properly drafted clauses. We disagree.

A bid is responsive only if the bidder unequivocally offers to provide the requested items or services in total conformance with the specification requirements and the conditions of the invitation. Giant Lift Equipment Manufacturing Company, Inc., B-213558, May 22, 1984, 84-1 C.P.D. ¶ 542. While, under certain circumstances, a bid which contains a mistake may be corrected prior to award, generally, a bid made nonresponsive by an alleged mistake may not be corrected to make it responsive. See Jewel Associates, B-213456, Mar. 20, 1984, 84-1 C.P.D. ¶ 335. The McCarty case, supra, cited by PEU, involved an error in bid price which did not affect the responsiveness of the bid and 52 Comp. Gen. 604, supra, discusses the exception to the responsiveness rule where there is a bid price omission in a pattern of pricing. This exception is based on the premise that, where the pricing pattern in the bid establishes both the existence of the error and the bid actually intended, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. 52 Comp. Gen. 604, supra.


PEU argues that the pattern of pricing rationale should be applied here because PEU's bid contained a pattern of two properly drafted cancellation clauses. We do not agree. The pattern of pricing exception is applied when a price is omitted and the pattern of prices clearly evidences that but for a clerical error (the omission) the bidder intended to bid a specific price. However, here, PEU submitted a cancellation clause which on its face was complete and which limited the insured's right to be protected for the 120-day period specified in the IFB, thereby making its bid non-responsive. See Giant Lift Manufacturing Company, Inc., B-213558, supra. Accordingly, the bid was properly rejected and the mistake in bid procedures cannot be utilized to make PEU's nonresponsive bid responsive. See Ebonex, Inc., B-211557, Aug. 9, 1983, 83-2 C.P.D. ¶ 192.

In view of the fact that PEU was properly found to be nonresponsive based upon its failure to incorporate a required cancellation provision in its bid, there is no need

to address the propriety of the other basis on which PEU was determined to be nonresponsive.

PEU questions the propriety of the way its bid was determined to be nonresponsive because "the two bases cited by HUD to justify its finding that PEU was nonresponsive were brought to HUD's attention . . ." by the awardee. We find no reason to address this allegation, since PEU's bid is clearly nonresponsive on its face.

Finally, PEU questions the responsiveness of Alexander's bid. We find that PEU is not an interested party under our Bid Protest Procedures to protest the award to Alexander. Therefore, we will not consider this issue. In view of the nonresponsiveness of PEU's bid, PEU is not eligible for an award. Further, PEU's allegations against award to Alexander, if sustained, would not result in a resolicitation and an opportunity for PEU to rebid, since there are six other bidders above Alexander. Therefore, the protester does not have the direct and substantial interest that is necessary to make it an interested party in this case. Bailey Controls Company, B-209800, Aug. 23, 1983, 83-2 C.P.D. ¶ 230; Holm Well Drilling, Inc., B-207774, Oct. 22, 1982, 82-2 C.P.D. ¶ 362.

for 
Comptroller General
of the United States